

# Chapter 1

## Committee Qualification

### What is an Independent Expenditure Committee?

An independent expenditure committee is an individual or entity (e.g., corporation, firm, business, or proprietorship) that makes one or more independent expenditures totaling \$1,000 or more in a calendar year. There are circumstances under which affiliated individuals and entities are considered to be a single committee. These are discussed later in this chapter. Independent expenditure committees do not receive contributions for the purpose of making expenditures supporting or opposing California candidates or ballot measures.



**Quick TIP** If an individual or entity receives contributions totaling \$1,000 or more in a calendar year for the purpose of making contributions or independent expenditures in connection with California candidates or ballot measures, refer to the FPPC campaign manuals for “primarily formed recipient committees” or “general purpose recipient committees.” When two or more individuals or entities make separate payments totaling \$1,000 or more for a single communication, they also may qualify as a recipient committee.

### What is an Independent Expenditure?

An “independent expenditure” is a payment for a communication that **expressly advocates** the election or defeat of a **clearly identified** California state or local candidate or the qualification, passage, or defeat of a clearly identified state or local ballot measure, **and** the communication is **not coordinated** with or “made at the behest” of the affected candidate or committee.

**Example** In May, Sandra Farmer paid \$4,000 for a mailing that included the statement “Vote No on Measure A.” Sandra, acting on her own, paid for the mailing with her personal funds and qualified as an independent expenditure committee.

In October, MBI Development Corporation paid for a series of automated telephone calls to voters in Southern California that urged voters to vote for a statewide candidate. The corporation, acting independently of the candidate’s committee, paid \$12,000 for the calls. The corporation qualified as an independent expenditure committee.

### Express Advocacy

A communication *expressly advocates* support or opposition of a clearly identified candidate when it uses words such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” etc.

### Clearly Identifies

A communication *clearly identifies* a candidate or measure when the candidate’s name, photograph, or status as a candidate or officeholder is used, or the measure’s name, popular title, or official title is used. Some flyers may mention a group of candidates by some well-defined characteristic of the group. Even if no specific names are used, these, too, may be communications which *clearly identify* candidates.

### Is the Expenditure Independent or Coordinated with the Campaign?

An expenditure is not considered independent if:

- It is made at the request, suggestion, or direction of, or in cooperation,

consultation, or coordination with the candidate or committee for whose benefit the expenditure is made.

- The candidate or committee or their agents have made or participated in making any decision about the content, timing, location, mode, intended audience, distribution, or placement of the communication.
- The creator, producer, or the person paying for the communication has had discussion and agreement with the candidate or committee, or their agents, regarding the content, timing, location, mode, intended audience, distribution, or placement of the communication.

An expenditure is **presumed to be coordinated** or “made at the behest of” a candidate or committee if:

- It is based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate or committee.
- It is made by or through any agent of the candidate or committee in the course of the agent’s involvement in the current campaign.
- The person making the expenditure retains the services of a person who provides the candidate with professional services related to campaign or fundraising strategy for that same election.
- The communication reproduces, republishes, or disseminates a communication designed, produced, paid for, or distributed by the candidate or committee.

### Coordination Results in Contribution

When a communication expressly advocates a clearly identified candidate or measure and the communication is coordinated with or “made at the behest of” the candidate or

committee, the communication will qualify as a contribution.

However, an expenditure will not be considered a contribution to a candidate merely because:

- The person making the expenditure interviews the candidate on issues affecting the person making the expenditure.
- The person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate’s agents.
- The person making the expenditure has invited the candidate or committee to make an appearance before the person’s members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or committee prior to the expenditure related to details of the expenditure.

FPPC regulations 18225.7 and 18550.1, summarized above, specify when a communication is considered independent or made at the behest of a candidate or committee. Because the determination is based on specific facts, persons may contact the FPPC for guidance.

### Affiliated and Non-Affiliated Committees

There are certain situations when payments made by two or more persons are aggregated and the persons are treated as a single committee for reporting purposes.

Under the Act, the term “person” includes an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, committee, and association.

Affiliated individuals and entities will qualify as a single independent expenditure

committee, if, together, their independent expenditures total \$1,000 or more, in a calendar year.

The following payments are aggregated:

- Contributions or independent expenditures made from an individual's personal funds and from funds he or she directs and controls.
- Contributions or independent expenditures made by two or more entities that are directed and controlled by a majority of the same persons.
- Contributions or independent expenditures made by entities that are majority owned by any person. Contributions and independent expenditures made by the majority owner and all other entities majority owned by that person are aggregated unless the entities act independently in their decisions to make contributions or independent expenditures.

The following are basic examples to provide general guidance. Every case is unique and we encourage you to contact us for advice.

**Example** *In May, Ellen Gomez attended a fundraiser for a candidate and used her personal funds to pay for the \$500 ticket. In June, she made a \$3,000 independent expenditure from her wholly owned business to oppose a ballot measure and qualified as an independent expenditure committee. Because Ms. Gomez directed and controlled all of the payments, she and her business qualify as a single committee and must disclose her personal contributions as well as the independent expenditures made from her business.*

**Example** *Pace Computers contributed a total of \$9,000 to support various legislative candidates. Under the direction of Pace Computers, Global Software, Inc., a company in which Pace Computers has a greater than 50 percent ownership interest,*

*made an independent expenditure of \$7,000 to support a local candidate. Because Global Software, Inc. did not act independently, the companies qualify as a single committee and will file a single Form 461 listing both contributions and independent expenditures.*

**Example** *Southwest Telecom has a greater than 50 percent ownership interest in American Telecom. Each entity, entirely on its own and with separate decisionmaking bodies, made independent expenditures of \$1,000 or more. Southwest Telecom made an independent expenditure in connection with a state ballot measure, while American Telecom made independent expenditures in connection with a local ballot measure. Because Southwest Telecom and American Telecom acted completely independently in their decisions, a Form 461 would be filed separately by each company listing only that company's expenditures.*

### **Multipurpose Organizations (Including Nonprofit Organizations, and Federal and Out-of-State Political Action Committees)**

Some organizations that receive donations or other payments (e.g., membership dues) for purposes other than making political expenditures in California nevertheless do, at times, make political expenditures to support or oppose California state or local candidates or ballot measures. These organizations may be subject to filing campaign statements in California.

A multipurpose organization is receiving "contributions" if its members or donors make payments to the organization (including dues) and, at the time of making the payments, the donors know or have reason to know that the funds with which their payments will be commingled will be used to make contributions or expenditures to

support or oppose California state or local candidates or ballot measures.

There is a presumption that the donors do **not** have reason to know that all or part of their payments made to the multipurpose organization will be used for political activities in California **unless** the organization has made expenditures or contributions totaling at least \$1,000 during the current calendar year or any of the immediately preceding four calendar years.

A multipurpose organization may become an independent expenditure committee if it makes independent expenditures totaling \$1,000 or more in a calendar year to influence a state or local election and the organization has not made expenditures or contributions totaling at least \$1,000 in the current and past four years.

If the multipurpose organization makes another independent expenditure of \$1,000 or more, the organization will qualify as a recipient committee. Recipient committees have different filing obligations. Organizations should contact the FPPC for guidance.

### **501(c)(3) and 501(c)(4) Organizations Making Occasional Independent Expenditures to Support or Oppose Ballot Measures**

FPPC Regulation 18413 provides an alternative event based method of reporting for certain 501(c)(3) and 501(c)(4) organizations that make occasional independent expenditures to support or oppose ballot measures. The regulation's specific requirements are reviewed in Chapter 4.

### **Other Types of Payments**

#### **Communications Identifying State Candidates (No Express Advocacy)**

An independent expenditure committee that makes a payment or promise of payment

totaling \$50,000 or more for a communication that 1) clearly identifies a state candidate; but 2) does not expressly advocate the election or defeat of the candidate; and 3) is disseminated, broadcast, or otherwise published within 45 days of the candidate's election, is required to file Form E-530. (See Chapter 3.)

### **Member Communications**

Payments made by an entity (including a business entity) for a communication that supports or opposes a candidate or ballot measure are not contributions or independent expenditures as long as the communication is sent only to the organization's members, employees, shareholders, or their families. The payments may not be for general public advertising, such as billboards, newspaper, radio, or television ads.

**Example** *A corporation sends a mailing supporting a ballot measure to the corporation's shareholders. The mailing is not a contribution to the ballot measure committee whose position is supported or an independent expenditure. The mailing does not trigger disclosure reports.*

### **Payments for Governmental, Legislative, or Charitable Purposes**

Payments made in connection with a governmental, legislative, or charitable event, such as a job or health fair, a charity fundraiser, or a conference on educational issues, that are coordinated or requested by an elected official from a source other than the official's agency, such as a business, are generally not considered gifts or contributions to the elected official who is co-sponsoring the event. However, the official may be required to disclose the payments if they total \$5,000 or more.

**Example** *At Councilmember Stark's request, Diamond Dairy made a \$10,000 donation to the Boy's and Girl's*

*Club. Councilmember Stark will file a report with the city clerk disclosing the donation and donor's name and address. Diamond Dairy is not required to report the payment.*

### Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

#### Government Code Sections

- 82013     *Committee.*
- 82015     *Contribution.*
- 82031     *Independent Expenditure.*
- 85310     *Communications Identifying State Candidates.*
- 85312     *Communications to Members of an Organization.*

#### Title 2 Regulations

- 18215     *Contribution.*
- 18225     *Expenditure.*
- 18225.4   *Independent Expenditures; When Aggregated.*
- 18531.7   *Payments for Communications—Section 85312.*
- 18531.10   *Communications Identifying State Candidates.*
- 18550.1   *Independent and Coordinated Expenditures.*